

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

SPABO ICE CREAM CORP. d/b/a	:	
MISTER SOFTEE	:	
	:	
and	:	
	:	
MISTER SOFTEE, INC.	:	Civil Action No. 08-CV-6138
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
DOMINGO ICE CORP., a/k/a	:	
DOMINGO ICE CREAM,	:	
	:	
and	:	
	:	
AKOP PAPAZIAN,	:	
	:	
and	:	
	:	
M PETE SOFT ICE CREAM CORP,	:	
	:	
and	:	
	:	
FAUSTO MORETA	:	
	:	
Defendants.	:	
	:	

TO: J. Michael McMahon, Clerk Of Court
United States District Court
Southern District Of New York
500 Pearl Street
New York, New York 10007

Please enter the default of Defendant M Pete Soft Ice Cream Corp. pursuant to Rule 55(a) of the Federal Rules of Civil Procedure for failure to plead or otherwise defend the above-captioned action as fully appears from the court file herein and from the attached affirmation of Paul J. Cianci.

EINBINDER & DUNN, LLP

Date: August 13, 2008

BY: 

Michael Einbinder (ME-3930)
104 W. 40th Street
New York, NY 10018
(212) 391-9500
Attorneys for Plaintiffs

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and	:	
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M PETE SOFT ICE CREAM CORP,	:	
	:	
and	:	
	:	
FAUSTO MORETA	:	
	:	
Defendants.	:	
	:	

Plaintiffs Spabo Ice Cream Corp. d/b/a Mister Softee and Mister Softee, Inc., by their undersigned attorneys, respectfully request that the Clerk of this Court certify default against Defendant M Pete Soft Ice Cream Corp. ("Defendant"), and in support thereof Paul J. Cianci, counsel for Plaintiff, avers as follows:

1. Defendant is a corporation (and thus, is not an infant, in the military, or an incompetent person).

2. The time within which Defendant may answer or move with respect to the complaint herein has expired. Defendant has not answered or otherwise moved with respect to the complaint, and the time for Defendant to do so has not been extended through this date.

3. A true and correct copy of the Affidavit of Service upon Defendant is attached hereto as Exhibit A.

I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge and information.

FISHER ZUCKER LLC

Dated: August 13, 2008

By: /s/ Paul Ciani
Paul J. Ciani
21 South 21st Street
Philadelphia, PA 19103
(215) 825-3100
Attorneys for Plaintiffs

Exhibit “A”

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

100-443887-100

AO 440 (Rev. 8/01) Summons in a Civil Action

UNITED STATES DISTRICT COURT

Southern

District of

New York

Spabo Ice Cream Corp., d/b/a Mister Softee
and Mister Softee, Inc.

SUMMONS IN A CIVIL ACTION

V.

Domingo Ice Cream Corp., et al.

CASE NUMBER:

08 CV 6138

JUDGE SCHEINDLIN

TO: (Name and address of Defendant)

M PETE SOFT ICE CREAM CORP
43-07 42nd Street, #2M
Sunnyside, NY 11104

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Michael Einbinder, Esquire
Einbinder & Dunn, LLP
104 W. 40th Street
New York, New York 10018

an answer to the complaint which is served on you with this summons, within 20 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

J. MICHAEL McMAHON

JUL 03 2008

CLERK

Marcos Quintero

DATE

(By) DEPUTY CLERK

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and	:	
	:	
M PETE SOFT ICE CREAM CORP,	:	
	:	
and	:	
	:	
FAUSTO MORETA	:	
	:	
Defendants.	:	
	:	

I, J. Michael McMahon, Clerk of Court of the United States District Court for the Southern District of New York, do hereby certify that Defendant M Pete Soft Ice Cream Corp. has not filed an answer or otherwise moved with respect to the complaint herein. The default of Defendant M Pete Soft Ice Cream Corp. is hereby noted, pursuant to Rule 55(a) of the Federal Rules of Civil Procedure.

J. MICHAEL MCMAHON
Clerk of Court

Dated: _____, 2008 By: _____
New York, New York Deputy Clerk